In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1494

JULIUS W. HOBSON, ET AL., PETITIONERS

v.

BOARD OF ELECTIONS FOR THE DISTRICT OF COLUMBIA, CIVIL SERVICE COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS CIVIL SERVICE COMMISSION AND ITS MEMBERS IN OPPOSITION

OPINIONS BELOW

The district court did not render an opinion. The *per curiam* opinion of the court of appeals (Pet. App. A-1) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on March 11, 1971. The petition for a writ of certiorari was filed on March 20, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Hatch Act, 5 U.S.C. (Supp. V) 7324-7327, is constitutional insofar as it prevents federal and

District of Columbia Government employees from actively participating in the campaign for the office of delegate to the House of Representatives from the District of Columbia.

STATEMENT

This case involves a broad-ranging challenge to the constitutionality of certain aspects of the District of Columbia Delegate Act, P.L. 91-405, 84 Stat. 848, which was enacted September 22, 1970. Petitioners include, among others, a candidate for Delegate to the House of Representatives from the District of Columbia and federal employees from the District (Pet. 6-7). The only claim that concerns the federal respondents (the Civil Service Commission and its members) relates to the effect of the Hatch Act, 5 U.S.C. (Supp. V) 7324-7327, upon the Delegate election.

Petitioners claim that the Hatch Act violates the First Fifth, Ninth and Tenth Amendments to the Constitution. Petitioners also contend that the Act unconstitutionally deprives them of the equal protection of the laws by reducing the pool of possible campaign workers for petitioners' D.C. Statehood Party, thereby rendering it more difficult to gather signatures necessary to comply with the District of Columbia Election Law.

The district court denied petitioners' motion for the convening of a three-judge court and dismissed the complaint. As far as is relevant here, the court of ap-

peals affirmed on the ground that the questions presented were insubstantial (Pet. App. A1-A2).[1]

ARGUMENT

1. Petitioners' challenge to the constitutionality of the Hatch Act is controlled by this Court's decisions rejecting similar challenges. *United Public Workers* v. *Mitchell,* 330 U.S. 75; *Oklahoma* v. *Civil Service Commission,* 330 U.S. 127.[2]

In *Mitchell,* a federal employee challenged on First, Fifth, Ninth and Tenth Amendment grounds the constitutionality of the provision in the Hatch Act, 5 U.S.C. (Supp. V) 7324(a)(2), which prohibits an officer or employee in the executive branch of the federal government from "taking an 'active part in political management or in political campaigns.' " 330 U.S. at 94, 95. Rejecting the constitutional attack, this Court concluded that the Hatch Act constituted a valid exercise of government authority to control actions that "in the judgment of Congress menace the integrity and the competency of the [civil] service," *id.* at 103. As the Court pointed out, Congress had determined that government employees who were active in partisan

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[1] The court vacated that portion of the judgment relating to the "party qualifying provisions for the Presidential election contained in Section 8(f) of the District of Columbia Election Act" and remanded for a hearing on the ripeness of the constitutional issues raised (Pet. App. A2).

[2] See also *Fishkin* v. *Civil Service Commission,* 309 F. Supp. 40 (N.D. Cal.), appeal dismissed, 396 U.S. 278; *Kearney* v. *Macy,* 409 F. 2d 847 (C.A. 9), certiorari denied, 397 U.S. 943.

politics constituted a "danger to the [civil] service in that political rather than official effort may * * * be channeled through political connections," *id.* at 98. Aware of earlier periods in our history when there was little if any delineation between government employment and partisan politics, this Court further noted that Congress could have properly found that "government employees are handy elements for leaders in political policy to use in building a political machine," *id.* at 101. Finally, this Court emphasized the limited scope of the Act, explaining that it was "only partisan political activity that [has been] interdicted," *id.* at 100.

2. Subsequent decisions of this Court concerning First Amendment rights do not vitiate the holding in *Mitchell.* The constitutional principle that "laws which restrict the liberties guaranteed by the First Amendment should be narrowly drawn to meet the evil aimed at" was firmly established at the time of the *Mitchell* decision, *id.* at 110. After full consideration, the Act was upheld as sufficiently precise and narrowly drawn to withstand attack on this ground. Even in this constitutionally sensitive area, Congress is not restricted to enacting laws that would require cumbersome and perhaps ineffective case-by-case administration, but may utilize realistic legislative classifications adequate to eliminate the potential for evil with which it is legitimately concerned. The danger of politicization of the federal civil service exists no less today than in 1947.

3. Petitioners also argue that the Hatch Act, in combination with the signature requirements of the District of Columbia Election Act for nominating petitions,

gives rise to the kind of invidious discrimination in favor of established party candidates condemned by this Court in *Williams* v. *Rhodes,* 393 U.S. 23. That case prohibits withholding from new party candidates advantages enjoyed by candidates of established parties. The Hatch Act creates no such distinction. The Act's restrictions apply uniformly to all government employees covered, regardless of party affiliation. Whatever practical inequalities may exist between new and established political parties in the District of Columbia they result from factors other than the Hatch Act.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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